

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner lives in a household with her two-month old child and the child's father. She is not currently working because she is unable to obtain childcare for her infant. Her child has health insurance through PATH's "Dr. Dynasaur" program. The child's father is covered through his employer's health insurance but his insurance will not cover a non-spouse. The petitioner did not have health insurance in her last job but was covered by Medicaid when she was pregnant.

2. The petitioner applied for VHAP benefits in June of 2000. She was told that she would have to supply income information on her child's father since he lives in the household with her. She supplied that information which showed that he earned \$575.53 per week, or \$2475 per month. (He now earns \$605.34 per week.) The petitioner was notified on July 3, 2000 that she was not eligible for VHAP benefits due to her child's father's income.

3. The petitioner agrees that she would not be eligible if her child's father's income is countable towards her eligibility. She appeals because she feels it is wrong to use his income since he has no obligation to support her and believes that the regulations do not require the inclusion of his income unless they are married. She needs health insurance because she is a "high risk" cancer patient.

ORDER

The decision of the Department is affirmed.

REASONS

The VHAP program was created by the state legislature to expand health care access to uninsured low-income Vermonters. 33 V.S.A. § 1972. It operates under a waiver from the federal

Health Care Financing Administration and is funded in large part through a state trust fund. The regulations adopted by PATH, the administering agency, require that certain individuals be considered members of the applicant group if they live in the same home and requires the inclusion of the income of every group member:

Financial Need of a VHAP Group

An individual must be a member of a VHAP group with countable income under the applicable income test to meet this requirement.

A VHAP group includes all of the following individuals if living in the same home:

- a. The VHAP applicant and his or her spouse;
- b. children under age 21 of the applicant or spouse;
- c. siblings under age 21, including halfsiblings and stepsiblings, of b.;
- d. parents, including a stepparent and adoptive parents of c., and
- e. children of any children in b. and c., and
- f. unborn children of any of the above.

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WAM 4001.8

The petitioner interprets this regulation as including only spouses in the group, not "boyfriends". The petitioner is correct that the regulations do not require the inclusion

of "boyfriends" and if she and her child's father did not have a child in common, his income would not be included. However, the regulations do require that her child be included in the VHAP group under paragraph (b) and that her child's parent be included under paragraphs (d) and (e) because they both live with her. The regulation includes persons who are likely living together as a family economic unit even if they have no legal duty to support each other.

The petitioner has offered no legal argument that the Department's regulation is illegal or unauthorized. In fact, such deeming of income between household members who are not legally related to each other but who are related to other members of the household is used in the majority of assistance programs including ANFC, Food Stamps, and Heating Assistance.¹ Such deeming has withstood legal challenges many times before the Board (see e.g. Fair Hearing No. 15,447) and before state and federal courts, including the U.S. Supreme Court. See Bowen v. Guillard, 483 U.S. 587, (1987).

It must be concluded that the Department is correct to include the father of the petitioner's child in her VHAP

¹ In the Food Stamp and Heating Assistance programs, household members do not even need a relationship to any other member to be included in the household so long as household members operate as an economic unit for buying food or heating fuel. See F.S.M. § 273.1(a); W.A.M. § 2901.2.

group. His earned income (minus a \$90 employment expense deduction) has made the petitioner's assistance group more than \$600 per month in excess of program maximums for a family of three (\$1769 per month) P-2420 B (6). It must be concluded that the Department correctly calculated the petitioner's eligibility and denied her in accordance with its regulations.

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